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## SECURING AMERICA’S FEDERAL ELECTIONS ACT

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**Section 1. Short title; table of contents.** Declares that this title may be called the “Securing America’s Federal Elections Act”, offers a table of contents.

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### TITLE I – Financial Support for Election Infrastructure

- Overview: Establishes standards for voting systems and election vendors and expands the Election Assistance Commission’s ability to issue grants to harden our nation’s election infrastructure and ensure the accuracy and integrity of elections, including through the means of risk-limiting audits.

#### Subtitle A – Voting System Security Improvement Grants

Part 1 – Promoting accuracy, integrity, and security through voter-verified permanent paper ballot

**Section 101. Short title.** This subtitle may be cited as the “Voter Confidence and Increased Accessibility Act of 2019”.

**Section 102. Paper ballot and manual counting requirements.** Requires individual, durable, voter-verified, paper ballots. Votes must be counted by hand or read by an optical character recognition device or other counting device. Defines “individual, durable, voter-verified, paper ballot” as a paper ballot marked by the voter by hand or marked through the use of a nontabulating ballot marking device or system, so long as the option exists to mark by hand. Voting system must provide voter an opportunity to correct ballot before ballot is preserved. Ballots are not preserved in any manner that makes it possible to associate a voter to the ballot without the voter’s consent. Paper ballot constitutes official ballot and shall be used for any recount or audit, and shall be counted by hand in the event of a recount or audit for any federal election. Requires that paper ballots cast be considered the true and correct record of votes cast in the event of any inconsistency or irregularities between hand-counted ballots and any electronic vote tallies. Applies paper ballot requirement to all ballots cast in elections for federal office, including ballots cast by absent uniformed services voters and overseas voters under the Uniformed and Overseas Citizens Absentee Voting Act. Provides a special rule for treatment of disputes when paper ballots have been shown, by clear and convincing evidence, to be compromised, and where compromised ballots exist in such numbers that the results of the election could be changed by them. Provides that the appropriate remedy shall be made in accordance with applicable state law, except that the electronic tally may not be used as the exclusive basis for determining the official certified result.

**Section 103. Accessibility and ballot verification for individuals with disabilities.** Requires the use of at least one voting system at each polling place that is equipped for individuals with disabilities (including nonvisual and enhanced visual accessibility for the blind and visually

impaired, and enhanced manual accessibility for the mobility and dexterity impaired). Further requires that, for federal elections occurring six years or more after the enactment of the SAFE Act, each polling place shall have at least one voting system for voters with disabilities that marks ballots identical in size, ink, and paper stock to ballots used by voters without accessibility needs, that also marks the ballot in a manner such that it is not readily discernable whether the ballot was marked by machine or hand, and that combines ballots produced from the accessible voter system with other ballots in a manner that prevents identification of which ballots were cast by which system. Requires that such system be available for use by any voter who requests its use, and, for federal elections occurring six years or more after the enactment of the SAFE Act, such systems must allow the voter to privately and independently verify the accuracy of the paper ballot by presenting, in an accessible form, the vote selections in the same manner they would appear for any vote tabulation or auditing. Clarifies that nothing in this section shall be construed to prohibit the use of an accessible ballot that may be printed or marked by the voter at home.

Authorizes to be appropriated \$5,000,000 for the Director of the National Science Foundation to make grants to at least three entities to study, test, and develop accessible paper ballot voting, verification, and casting mechanisms, and best practices to enhance accessibility of paper ballot voting and verification for voters with disabilities, voters whose primary language is not English, and voters who have difficulties with literacy. Establishes grant eligibility requirements and notes that any technology developed under these grants shall be treated as non-proprietary and made available to the public. Directs Director to coordinate these activities with grants for technology improvements. Requires that when adopting any voluntary guidance regarding accessibility of the paper ballot verification requirements for individuals with disabilities, the Election Assistance Commission shall apply the same accessibility standards applicable under this subtitle. Permits use of funds for protection and advocacy systems to support actions to enforce election-related disability access.

**Section 104. Durability and readability requirements for ballots.** Requires that all voter-verified ballots are printed on durable paper that is able to maintain the accuracy and integrity of the ballot over repeated handling, including retaining and preserving information printed on the ballot for a period of 22 months. Requires all voter-verified paper ballots completed through the use of a ballot marking device shall be clearly readable by the voter without assistance (other than eyeglasses or other personal vision enhancing devices) and by an optical character recognition device or other device equipped for individuals with disabilities.

**Section 105. Paper ballot printing requirements.** Requires that all paper ballots used in an election for federal office shall be printed in the United States on recycled paper manufactured in the United States.

**Section 106. Study and report on optimal ballot design.** Requires the Election Assistance Commission to conduct a study of the best ways to design election ballots, including paper ballots

and electronic or digital ballots, to minimize confusion and user errors, and to provide a report to Congress on said study not later than January 1, 2020.

**Section 107. Effective date for new requirements.** Maintains that each state and jurisdiction shall be required to comply with Help America Vote Act of 2002 requirements on and after January 1, 2006, with exceptions for new requirements including that new requirements first imposed on a state or jurisdiction by the Voter Confidence and Increased Accessibility Act of 2019 shall apply to voting systems used for federal elections in 2020 and after. Allows that jurisdictions using certain systems such as certain paper record printers (including voter-verified paper record printers attached to direct recording electronic voting machines) may also delay to 2022 regarding select requirements, so long as certain contingencies are in place during the delay, including the option of having voters cast a vote using a blank pre-printed paper ballot which the voter may mark by hand and which is not produced by the direct recording electronic voting machine or other such system, and requiring that such paper ballot be counted as a regular and not provisional ballot. Further requires each polling place display notice of paper ballot option, and training of poll workers about said option, all in effect so long as delayed compliance is in effect.

#### Part 2 – Grants to carry out improvements

**Section 111. Grants for obtaining compliant paper ballot voting systems and carrying out voting system security improvements.** Amends Subtitle D of Title II of the Help America Vote Act of 2002 by adding the following part:

Part 7 – Grants for obtaining compliant paper ballot voting systems and carrying out voting system security improvements.

**Section 297. Grants for obtaining compliant paper ballot voting systems and carrying out voting system security improvements.** Directs the Election Assistance Commission to make available grants for eligible states to 1) replace voting systems that are not compliant paper ballot voting systems under the Voter Confidence and Increased Accessibility Act of 2019, or those which are compliant but do not meet the most recent voluntary voting system guidelines promulgated by the Commission prior to the November 2020 federal elections, as well as 2) carry out voting system security improvements, and 3) implement and model best practices for ballot design, ballot instructions, and ballot testing.

Establishes that grants made to states under this section shall be of an amount the Commission determines to be appropriate, except that a state shall not receive less than the product of \$1 and the average of the number of individuals who cast votes in any of the two most recent regularly scheduled general elections for federal office held in the state. In the event that Congress appropriates insufficient funds to provide states the amount directed per the above, the Commission shall make a pro rata reduction to ensure that the

entire appropriated amount is distributed to the states. Provides factors for the Commission to consider in awarding excess funds to a state in the event of a surplus of appropriated funds. Also provides that, to the greatest extent practicable, an eligible state which receives a grant to replace a voting system under this section shall ensure such replacement system is capable of administering a system of ranked choice voting.

**Section 297A. Voting system security improvements described.** Defines voting system security improvements as: (1) The acquisition of goods and services from qualified election infrastructure vendors by purchase, lease, or such other arrangements as may be appropriate; (2) cyber and risk mitigation training; (3) a security risk and vulnerability assessment of the state's election infrastructure which is carried out by a provider of cybersecurity services under a contract entered into between the chief state election official and the provider; (4) the maintenance of election infrastructure, including addressing risks and vulnerabilities which are identified under either of the security risk and vulnerability assessments described in paragraph (3), except that none of the funds provided under this part may be used to renovate or replace a building or facility which is used primarily for purposes other than the administration of elections for public office; (5) providing increased technical support for any information technology infrastructure that the chief state election official deems to be part of the state's election infrastructure or designates as critical to the operation of the state's election infrastructure; (6) enhancing the cybersecurity and operations of the information technology infrastructure described in paragraph (4); and (7) enhancing the cybersecurity of voter registration systems.

Defines a "qualified election infrastructure vendor" as any person who provides, supports, or maintains, or who seeks to provide, support, or maintain, election infrastructure on behalf of a state, unit of local government, or election agency who meets certain criteria established by the Chair of the Election Assistance Commission and the Secretary of Homeland Security.

Directs the Chair of the Election Assistance Commission and the Secretary of Homeland Security to include the following in the criteria a person must meet to be considered a "qualified election infrastructure vendor": (A) the vendor must be owned and controlled by a citizen or permanent resident of the United States; (B) the vendor must disclose to the Chairman and the Secretary, and to the chief state election official of any state to which the vendor provides any goods and services with funds provided under this part, of any sourcing outside the United States for parts of the election infrastructure; (C) the vendor agrees to ensure that the election infrastructure will be developed and maintained in a manner that is consistent with the cybersecurity best practices issued by the Technical Guidelines Development Committee; (D) the vendor agrees to maintain its information technology infrastructure in a manner that is consistent with the cybersecurity best practices issued by the Technical Guidelines Development Committee; (E) the vendor

agrees to meet the notification requirement defined herein with respect to any known or suspected cybersecurity incidents involving any of the goods and services provided by the vendor pursuant to a grant under this part; and (F) the vendor agrees to permit independent security testing by the Commission and by the Secretary of the goods and services provided by the vendor pursuant to a grant under this part.

Establishes cybersecurity incident reporting requirements that a vendor meets if, upon learning of a potential cybersecurity incident involving any of the goods and services provided by the vendor, the vendor promptly assesses whether such incident occurred and notifies the Chair of the Election Assistance Commission and the Secretary of Homeland Security as soon as practicable but not later than three days after becoming aware of the potential incident. The vendor must also inform any potentially impacted election agency within three days and cooperate with the agency in providing any further notifications necessary. The vendor must provide ongoing updates to the Chair of the Election Assistance Commission, the Secretary of Homeland Security, and the impacted election security agency.

The notification the vendor must provide to the Chair of the Election Assistance Commission, the Secretary of Homeland Security, and the impacted election security agency must include the following: (1) the date, time, and time zone when the election cybersecurity incident began, if known; (2) the date, time, and time zone when the election cybersecurity incident was detected; (3) the date, time, and duration of the election cybersecurity incident; (4) the circumstances of the election cybersecurity incident, including the specific election infrastructure systems believed to have been accessed and information acquired, if any; (5) any planned and implemented technical measures to respond to and recover from the incident; (6) in the case of any notification which is an update to a prior notification, any additional material information relating to the incident, including technical data, as it becomes available.

**Section 297B. Eligibility of states.** To be eligible for a grant, in its application to the Election Assistance Commission, a state must: (1) describe how it will use the grant to carry out the activities authorized under this part; (2) certify and assure that, not later than 5 years after receiving the grant, the state will carry out voting system security improvements as described above; and (3) provide other information and assurances as the Commission may require.

**Section 297C. Reports to Congress.** Requires the Election Assistance Commission to, not later than 90 days after the end of each fiscal year, submit a report to the appropriate congressional committees, including the Committees on Homeland Security, House Administration, and the Judiciary of the House of Representatives and the Committees on

Homeland Security and Governmental Affairs, the Judiciary, and Rules and Administration of the Senate, on the activities carried out with the funds provided under this part.

**Section 297D. Authorization of appropriations.** Authorizes to be appropriated \$600,000,000 for FY 2019. Authorizes \$175 million for each of the fiscal years 2020, 2022, 2024, and 2026. Allows that any amounts appropriated here shall remain available until expended.

**Section 112. Coordination of voting system security activities with use of requirements payments and election administration requirements under Help America Vote Act of 2002.** Adds the Secretary of Homeland Security or the Secretary's designee to the Board of Advisors of the Election Assistance Commission. Adds a representative from the Department of Homeland Security to the Technical Guidelines Development Committee.

Directs the Election Assistance Commission to consult with the Department of Homeland Security in conducting periodic studies on election administration and adds to the objectives of the periodic studies ensuring the integrity of elections against interference through cyber means.

Amends the allowable uses of requirements payments under the Help America Vote Act of 2002 to include voting system security improvements, including cyber training for election officials, technical support, enhancing cybersecurity of information systems, and enhancing cybersecurity of voter registration databases. Requires states to include protection of election infrastructure into their state plans for use of payments developed pursuant to 52 U.S.C. 21004.

Requires that the Committee responsible for composing the state plans developed pursuant to 52 U.S.C. 21004 be composed of a representative group from the state's counties, cities, towns, Indian tribes, and to represent rural as well as urban areas.

Requires states to undertake measures to prevent and deter cybersecurity incidents, as identified by the Commission, the Secretary of Homeland Security, and the Technical Guidelines Development Committee, of computerized voter registration databases.

**Section 113. Incorporation of definitions.** Amends the Help America Vote Act to include the definitions of "cybersecurity incident" (6 U.S.C. 148), "election infrastructure," "election agency," and "State" (States, D.C., Puerto Rico, Guam, American Samoa, U.S. Virgin Islands, Northern Mariana Islands).

#### Subtitle B – Risk-Limiting Audits

**Section 121. Risk-limiting audits.** Amends Title III of the Help America Vote Act of 2002 by adding the following new section:

**Section 303A. Risk-limiting audits.** Defines “risk-limiting audit” to mean a post-election process that has at least a 95% probability of correcting the reported outcome of an election if the reported outcome is incorrect; will not change the outcome if the reported outcome is the correct outcome; and involves a manual adjudication of voter intent (meaning a direct inspection and determination, by humans, of ballot choices marked by voters) from some or all validly-cast ballots in an election. Defines additional terms.

Requires that, not later than one year after the enactment of this section, each state’s chief election official must establish several specific rules and procedures for conducting risk-limiting audits. Establishes effective date by requiring that requirements of this section, including risk-limiting audits, be complied with for the first regularly scheduled federal election held more than one year following the enactment of the SAFE Act and for each subsequent election.

Requires that if a risk-limiting audit corrects the reported outcome of an election contest, the state will use the results of the manual adjudication of voter intent conducted within the risk-limiting audit as the official results of the election.

Exempts from risk-limiting audit requirement those election contests where a state or jurisdiction conducts a full recount through a manual adjudication of voter intent.

Requires state to publish public report after completion of risk-limiting audit and at least five days before the relevant election contest is certified, demonstrating results of the audit and information necessary to confirm that audit was properly conducted. Notes all data must be published in machine-readable, open data formats, and that data published must not compromise the anonymity of votes.

**Section 122. Funding for conducting post-election risk-limiting audits.** Amends Subtitle D of Title II of the Help America Vote Act of 2002 by adding the following:

Part 8— Funding for post-election risk-limiting audits.

**Section 298. Payments for post-election risk-limiting audits.** Establishes that the Commission will pay to states the amount of eligible post-election audit costs, where such costs are those paid or incurred by the state or local government for the conduct of any risk-limiting audit for a federal election occurring after the date of enactment of this section, and any equipment, software, or services needed to conduct such audit. Requires the Election Assistance Commission to establish rules and procedures for states to submit eligible costs, and establishes a formula to adjust payments to states if the amounts appropriated are insufficient to pay for all eligible post-election costs submitted by states. Authorizes the appropriation of such sums as are necessary to carry out this part, and establishes that appropriated amounts remain available until expended.

**Section 123. GAO analysis of effects of audits.** No later than 6 months after the first federal elections held for which states must conduct risk-limiting audits, requires that the Comptroller General of the United States conduct an analysis of the extent to which risk-limiting audits have improved election administration and the security of election infrastructure in states that received grants. Directs Comptroller General to submit a report to relevant congressional committees regarding such analysis.

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## Title II – Promoting Cybersecurity Through Improvements in Election Administration

- Overview: Promotes cybersecurity through improvements in election administration, including establishing cybersecurity requirements for voting systems, requiring use of election technology for which manufacturer has disclosed information, and streamlining collection of election information, among other improvements.

**Section 201. Voting system cybersecurity requirements.** Establishes ballot tabulating methods where voting systems must tabulate ballots by hand or use optical scanning devices that meet enumerated criteria (except in limited circumstances).

Requires that optical scanning devices must (i) be designed and built in such a manner that it is impossible for the device to add or change a voter's selection on a printed or marked ballot; (ii) be capable of exporting its data in a machine-readable, open data standard format; (iii) consist of hardware components certified by section 2216 of the Homeland Security Act that also conform to a hardware component manifest that includes point-of-origin and upstream hardware supply chain information that has been provided to the Election Assistance Commission, DHS, and each state where the device is used, and further may be shared with independent experts for cybersecurity analysis; (iv) utilize technology that prevents device operation if any hardware requirements are not met; (v) only operate using software for which the source code, compilation parameters, and build tools have been provided to the EAC, DHS, and the chief state election official of each state where the device is used, and such software may be shared with independent experts for cybersecurity analysis; (vi) utilize technology that prevents the software running should requirements of (v) be unmet; (vii) utilizes technology that allows stakeholders to verify that the software running on the device meets certain requirements; (viii) contains such other security requirements as the Director of Cybersecurity and Infrastructure Security require.

Allows the Director to waive some requirements for a period not to exceed two years, and requires internet publication of information related to any such waiver. Establishes effective date of these requirements for federal elections in 2024 and federal elections thereafter.

Prohibits use of wireless communications devices in systems or devices. Specifically, prohibits systems or devices on which ballots are programmed or designed, or ballots are marked (except as necessary for voting by individuals with disabilities), or upon which votes are cast, tabulated, or aggregated, from containing, using, or being accessible by wireless, power-line, or concealed communication device, effective in the federal elections of 2020.



Prohibits connection of voting system to the internet. Specifically requires that no system or device upon which ballot marking devices or optical scanners are configured, or ballots are marked by voters, or votes cast, tabulated, or aggregated, shall be connected to the internet or any other communications network at any time, effective in the federal elections of 2020.

Establishes additional cybersecurity standards for certain ballot marking devices. Prohibits states from using ballot marking devices unless an independent laboratory in a simulated election scenario finds there is less than a five percent chance that an ordinary voter using the device would not report any difference between her vote selection and the vote selection printed on the ballot by the ballot marking device. Lays out requirements for valid simulated election scenario and establishes effective date in the federal elections of November 2022 and each subsequent federal election. Establishes procedures and requirements for testing and certification of ballot marking devices, per an application submitted to the Election Assistance Commission. Allows for Commission to submit findings to an independent board for review and prohibits the Commission from charging fees associated with testing and certification to state or jurisdiction, or developer or manufacturer of ballot marking device, or any other relevant party.

**Section 202. Testing of existing voting systems to ensure compliance with election cybersecurity guidelines and other guidelines.** Amends the Help America Vote Act to require the Commission to provide, not later than nine months before regularly scheduled federal elections, for the testing by accredited laboratories under this section of the voting system hardware and software certified for use in the most recent such election, on the basis of the most recent voting system guidelines applicable to such hardware or software (including election cybersecurity guidelines) issued under this Act. Requires the Election Assistance Commission to decertify any hardware or software the Commission determines does not meet the most recent guidelines. This section applies to the regularly scheduled general election for federal office held in November 2020 and each succeeding regularly scheduled general election for federal office.

Amends the Help America Vote Act to require the Technical Guidelines Development Committee within the Election Assistance Commission, within six months of enactment of the SAFE Act, to issue election cybersecurity guidelines, including standards and best practices for procuring, maintaining, testing, operating, and updating election systems to prevent and deter cybersecurity incidents.

**Section 203. Requiring use of software and hardware for which information is disclosed by manufacturer.** Amends HAVA to establish that, in operating voting systems relevant to federal elections, states may only use software for which the source code is disclosed by the manufacturer and made publicly available online for use, excepting that the manufacturer may prohibit usage of the software primarily intended for commercial advantage or private compensation, unrelated to carrying out legitimate research or cybersecurity activity. Further excepts widely-used operating system software and cybersecurity software not specific to voting systems.

Prohibits usage of voting systems in federal elections unless the manufacturer discloses online the hardware used to operate the system. Adds additional restrictions and disclosure requirements for

custom-made or altered hardware, including that the design of such hardware must be made publicly available online for use, except that a manufacturer may prohibit use for commercial advantage or private compensation, unrelated to carrying out legitimate research or cybersecurity activity. Makes effective for federal elections held in 2020 or any succeeding year.

**Section 204. Treatment of electronic poll books as part of voting systems.** Amends the Help America Vote Act of 2002 to include electronic poll books as part of voting systems. Defines electronic poll book as the total combination of mechanical, electromechanical, or electronic equipment (including the software, firmware, and documentation required to program, control, and support the equipment) that is used: (1) to retain the list of registered voters at a polling location, or vote center, or other location at which voters cast votes in an election for federal office; and (2) to identify registered voters who are eligible to vote in an election. Renders effective January 1, 2020.

**Section 205. Pre-election reports on voting system usage.** Requires the chief state election official of each state to submit a report to the Election Assistance Commission containing a detailed voting system usage plan for each jurisdiction which will administer an election, including a plan for usage of electronic poll books and other system components, no later than 120 days prior to any regularly scheduled election for federal office. Makes effective for November 2020 federal elections and subsequent elections.

**Section 206. Streamlining collection of election information.** Waives certain federal information policy requirements of subchapter I of chapter 35 of title 44, United States Code for purposes of maintaining the clearinghouse described in this section.

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### Title III – Use of Voting Machines Manufactured in the United States

- Overview: Seeks to ensure that voting machines used in the United States for federal elections are manufactured in the United States.

**Section 301. Use of voting machines manufactured in the United States.** Amends the Help America Vote Act of 2002 by establishing that, not later than the regularly scheduled general election for federal office of 2022, each state shall seek to ensure that any voting machine used in that election and any election thereafter is manufactured in the United States.

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### TITLE IV – Severability

- Overview: Clarifies that if any provision of this Act or amendment made by this Act is held unconstitutional, the remainder of the Act shall not be impacted by the holding.

**Section 401. Severability.** Establishes severability such that the application of the provisions of this Act and amendments made by this Act shall not be impacted by a holding finding any provision of the Act or amendment made by the Act unconstitutional.

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